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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20542**

**FILE: B-190165**

**DATE: January 18, 1978**

**MATTER OF: Chemical Technology, Inc.**

**DIGEST:**

1. Determination to set aside procurement under section 8(a) of the Small Business Act is matter for contracting agency and SBA, and is not subject to review by GAO in absence of showing of fraud or bad faith on part of Government officials.
2. Responsibility for administration and enforcement of Service Contract Act rests with Department of Labor not GAO.
3. Unsupported allegation that firm was awarded guard service contract in violation of the Anti-Pinkerton Act is denied.

Chemical Technology, Inc. (CTI) has protested the award of two contracts to minority small businesses under the Small Business Administration's "8(a)" program. The two contracts are N00612-75-C-0189 issued by the Navy for food services at the Naval Station, Roosevelt Roads, Puerto Rico, and DOT-FA 7650-7919 issued by the Federal Aviation Administration for guard services at San Turce, Puerto Rico. CTI alleges that these two contracts (for which CTI is the incumbent) constitute 34 percent of its corporate sales and 90 percent of its sales in its Puerto Rican market. According to CTI, the loss of the opportunity to compete for these contracts would seriously injure it and would be contrary to SBA's rules and policy. Additionally, CTI argues that the contractor for the guard services, Vigilantes, Inc., is not qualified to be awarded the contract.

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The SBA responded to the protest by noting that:

"Following an SBA impact statement on both of these contracts (see 13 C.F.R. § 124.2-8(b), and SOP 60-41-2, § 7(b)(1)), it was determined that the contract for food services to be performed at the U.S. Naval Station Roosevelt Roads, Puerto Rico, will not be accepted by SBA for the 8(a) Program, since it would result in hardship to CTI. On the other hand, the contract for guard services to be performed at San Turce, Puerto Rico will be accepted for support of the 8(a) Program, since it is our determination that it would not result in hardship to CTI."

Moreover, in a supplemental report, SBA provided the documented rationale for finding Vigilantes to be a disadvantaged firm.

In A.R. & S. Enterprises, Inc., B-189832, September 12, 1977, 77-2 CPD 186 we stated that:

"Our Office no longer reviews decisions to set aside procurements under the 8(a) program in view of the broad discretion accorded the SBA under the Small Business Act (15 U.S.C. §37(a), (1970)) to enter into contracts with procuring agencies for the purpose of letting subcontracts to 8(a) firms. See Automation Information Data Systems, Inc., B-185055, June 15, 1976, 76-1 CPD 377; Jets Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. Pursuant to that decision, we will not review protests against 8(a) set-asides unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as to necessarily imply bad faith. Whether or not the procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide."

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The record indicates that the SBA has followed its regulations and procedures regarding the contract in question. No case for fraud or bad faith has been made.

CTI has also alleged that Vigilantes, Inc. is not honoring a collective bargaining agreement between CTI and its former employees now employed by Vigilantes, nor is Vigilantes paying according to the current wage determination pursuant to the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. (1970). The responsibility for administration of the Service Contract Act rests with the Department of Labor and not with GAO. Massa Flooring Co., Inc., January 19, 1977, B-187974, 77-1 CPD 45.

CTI also states that it has reason to believe that Vigilantes is primarily a detective agency, and therefore, any contract awarded to it would violate 5 U.S.C. § 1380 (1970), the so-called Anti-Pinkerton Act. CTI, however, has not provided any evidence of that fact. Moreover, our inquiry of the Corporate Registry of the Commonwealth of Puerto Rico indicates that Vigilantes was incorporated solely for the purpose of providing security policy services.

Accordingly, CTI's protest is denied.

  
For The Comptroller General  
of the United States